HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 806(M/S) of 2003

CIVIL SIDE

Vijay Kumar ….Petitioner

Versus

Civil Jude (JD), Dehradun & another …Respondents.

Hon. Rajesh Tandon,J.

By way of present writ petition under Article 227 of the Constitution of India, the petitioner has prayed for a writ of mandamus directing the Civil Judge (Junior Division), Respondent no.1 to decide the suit expeditiously.

Brief facts giving rise to the present writ petition are that plaintiff Rajeev Kumar Goel has filed a suit alleging therein that he is co-owner of the land situated at khasara no. 518 area 0.1000 hectare, khasra no.741 area 0.0800 hectare and khasara no. 742 area 0.1260 hectare. It was stated that the defendant no. 1 got a sale deed executed on 27.6.2000 from his wife i.e. defendant no.2 acting as attorney of Kamal Goel in respect of $1/6^{th}$ share. According to the plaintiff since it is a joint holding and, therefore, defendant no.1 has no right to raise construction on the joint property. The plaintiff, therefore, has prayed for a decree of permanent injunction in his favour. Along with the plaint the plaintiff respondent has also filed an application for injunction. On 23.11.01 injunction was granted under Order 39 Rule1 C.P.C.

The petitioner has filed an application for vacating injunction order on 4.12.2001 and the same is still pending and has not been disposed of.

Order 39 Rule 1 provides power of learned Judge in granting temporary injunction. Order 39 Rule 3 provides that before injunction the Court to direct notices to the opposite parties.

Order 39 Rule 4 provides that order for injunction may be discharged or set aside where the order was passed ex parte. Order 39 Rule 4 provides as under:

"Any order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite the court shall vacate the injunction unless, for reasons to be recorded it considers that it is not necessary so to do in the interest of justice.

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party."

The injunction order was passed as back as in the year 2001 and since then proceedings are pending. Neither interim injunction order has been finally disposed of nor the suit has yet proceeded. The grievance of the petitioner, therefore, is that since the injunction order is operating against the petitioner and he is unable to enjoy the

property, it is desirable in the interest of justice that the suit itself may be disposed of expeditiously.

Since it is a suit of the year 2001 and the injunction is already operating against the petitioner it will be in the interest of justice if the suit itself is disposed of within a period of six months from today. The petitioner shall be at liberty to move an application before the District Judge who shall direct the Civil Judge (Junior Division), Dehradun to fix a date for disposal of the suit.

With the aforesaid observation the writ petition is disposed of accordingly.

(**Rajesh Tandon,J.)**

29.08.2003
Dhyani